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IN THE

OCT 16 1945

CHARLES ELMORE GROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 407

COMMONWEALTH OF VIRGINIA, AT THE
RELATION OF TOWN OF APPALACHIA,
VIRGINIA, FRITZ KLIENICK, Trading as
KLIENICK MOTOR CO., R. C. BRAY, DR. R. W.
HOLLY, OLD DOMINION DRUG COMPANY,
INC., BOYD LEWIS, Trading as LEWIS GRO-
CERY STORES, A. NEEGAN, Trading as CIN-
CINNATI BARGAIN STORE, DRS. PETERS
and HANDY, Trading as MASONIC HOSPITAL,
DR. FRANK E. HANDY, W. C. MITCHELL,
Trading as MITCHELL'S BARBER SHOP,
HURT-YOUNG HARDWARE COMPANY, INC.,
W. R. YOUNG, J. A. HURT, D. W. LARGE, Trad-
ing as ACME DRUG CO., J. W. LARGE, E. S.
SMITH, L. D. DAUB, Trading as TWENTY
MINUTE SHOE SHOP, A. O. CARTER, ARCHIE
RAGAN and R. H. BOLLING

vs.

OLD DOMINION POWER COMPANY, INC.

**BRIEF IN OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI TO THE SUPREME COURT OF
APPEALS OF VIRGINIA**

**E. RANDOLPH WILLIAMS
T. JUSTIN MOORE**

*Counsel for
Old Dominion Power Company,
Inc.*



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1. The first part of the paper discusses the importance of maintaining accurate records of all transactions. It is essential for the business to have a clear and concise record of all income and expenses, as this will be necessary for the preparation of the annual financial statements.

2. The second part of the paper discusses the importance of maintaining accurate records of all assets and liabilities. It is essential for the business to have a clear and concise record of all assets and liabilities, as this will be necessary for the preparation of the annual financial statements.

3. The third part of the paper discusses the importance of maintaining accurate records of all equity transactions. It is essential for the business to have a clear and concise record of all equity transactions, as this will be necessary for the preparation of the annual financial statements.

4. The fourth part of the paper discusses the importance of maintaining accurate records of all debt transactions. It is essential for the business to have a clear and concise record of all debt transactions, as this will be necessary for the preparation of the annual financial statements.

5. The fifth part of the paper discusses the importance of maintaining accurate records of all other transactions. It is essential for the business to have a clear and concise record of all other transactions, as this will be necessary for the preparation of the annual financial statements.

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*To The Honorables, The Chief Justice of the United
States and Associate Justices of the Supreme Court
of the United States:*

The petitioners ask for a writ of certiorari to review a judgment of the Supreme Court of Appeals of Virginia. The judgment of the Court appears in the printed record at page 236. The opinion of the Court upon which the judgment rests appears at page 228. The order complained of affirmed an order of dismissal of the State Corporation Commission of Virginia. The decision of the State Corporation Commission and that of the Supreme Court of Appeals of Virginia involved solely the question of the jurisdiction of the State Corporation Commission of Virginia, a creation of the Constitution and Statute Laws of the Commonwealth.

Statement of the Case

This case involves no Federal question of substance not heretofore determined by this Court or a question in any way not in accord with applicable decisions of this Court. Indeed, upon the issues presented and decided by the State Corporation Commission of Virginia and the Supreme Court of Appeals of Virginia there was no Federal question of any kind involved, nor does the decision of the Supreme Court of Appeals of Virginia or the State Corporation Commission involve a question of general interest or concern. The failure of the petitioners to secure the rights alleged arises out of their failure to resort to the obvious remedy which both the State Corporation Commission and the Supreme Court of Appeals of Virginia recognized as open to the petitioners.

The Respondent, the Power Company, as pointed out in the decision and findings of the State Corporation Commission (R.p.217), had in effect as of May 1, 1939, a schedule of rates throughout its territory. On July 1, 1941, the Power Company filed, effective as of July 23,

1941, a revision of rates, superseding the rates of May 1, 1939, with certain exceptions as to territory. The Town of Appalachia was one of the exceptions, and, as the State Corporation Commission finds (R.p.217), the revised rates which became effective July 23, 1941, were not intended to apply to or include the Towns of Norton and Appalachia. The Power Company continued to charge the rates effective May 1, 1939, in the territory excepted, including the Town of Appalachia.

The petitioners, the excepted Town of Appalachia and some of its inhabitants, did not promptly or at any time apply to the State Corporation Commission for a review of the rates effective May 1, 1939, which were the rates continued to be charged as to these petitioners, but, after considerable period, attacked the validity of the changed rates which by express exception were not applicable to them. The petitioners have not at any time asked an inquiry as to the validity of the rates effective May 1, 1939, as applied to them, but, in persistent disregard of the obvious remedy, have attacked the reduced rates applicable to others on the ground that the new schedule of reduced rates lacked uniformity in that such rates did not apply to petitioners. The jurisdiction of the Commission to hear a complaint is fully set forth in Section 156, Subsection (b), of the Constitution of Virginia quoted in the opinion of the Supreme Court of Appeals (R.p.231), and expressly provided for in Section 4066 of the Code of Virginia which is quoted in part in the opinion of the Court of Appeals (R.p.233). The petitioners asked that the new rates expressly not applicable to them be condemned, which request, if granted, would have necessarily thrown them back to the rates originally effective. They further asked the State Corporation Commission not only for judgment as to the new rates but for a retroactive judg-

ment and accounting and recovery on a retroactive finding as to the invalidity of the changed rates.

Under this state of facts about which there can be no question, the Court of Appeals in its opinion (R.p.230) said:

"The question before us is whether, in the present proceeding, the Commission has jurisdiction to declare the rates, which were put into effect in the manner provided by law, and became effective on May 1, 1939, unjust and unreasonable as of July 23, 1941, when the revised schedule was put into effect, and to require the Power Company to refund to its customers in the Town of Appalachia the difference between the rates collected under the schedule of May 1, 1939, and those which would have been collected under the new schedule, which, the petitioners say, should, at the same time, have been put into effect in their community? Or, to state the matter tersely, has the Commission jurisdiction to put into effect, retroactively, reduced rates applicable to petitioners, and require the Power Company to refund to them the overcharges collected of them?"

The Court adds:

"We are of opinion that the Commission correctly held that it lacked the jurisdiction to grant such relief."

It is upon a judgment of dismissal as to the jurisdiction of the Commission that the petitioners ask for a writ of certiorari. That is the whole matter.

Jurisdictional Statement

The issue presented to the State Corporation Commission and upon appeal from the Commission to the

Supreme Court of Appeals of Virginia was purely and solely, as the Commission and the Supreme Court have both declared, a question of the jurisdiction of the State Corporation Commission as determined by the Constitution and the Statute Laws of the Commonwealth of Virginia. The petitioners say that this denial of the jurisdiction constituted a denial by the State of Virginia of equal protection of the laws of the State contrary to the provisions of XIV Amendment of the Constitution of the United States. This sounds frivolous, particularly in the light of the succeeding statement of counsel, appearing in the petition, page 7,—“The Supreme Court of Appeals, however, chose to ignore and evade the question while affirming the Commission’s denial of its jurisdiction to grant *any* relief to the petitioners” and in the light of the declaration of both the State Corporation Commission and the Supreme Court of Appeals that the wrong remedy was being pursued to assert the rights of the petitioners, if any they had. There was not denial of *any* relief but of relief in the manner pursued by petitioners.

Under this state of facts it would take a bold pleader to declare that this proceeding really and substantially involves a dispute or controversy as to the effect of the construction of the Constitution or the laws of the United States upon the determination of which the result depends. As this Court has repeatedly declared:

“It must appear on the record, by a statement in legal and logical form, such as is required in good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction of the Constitution or some law or treaty of the United States, before jurisdiction can be maintained on this ground.” (*Western Union Telegraph Company v. Ann Arbor Railroad Co.*, 178 U. S. 243.)

The Question Presented

There has been no denial of rights, constitutional or statutory, to the petitioners but merely a denial of the selected remedy erroneously pursued. Petitioners have yet to follow the remedy pointed out, both by the State Corporation Commission of Virginia and the Supreme Court of Appeals, to secure their rights, if any they have. Petitioners have not, as they allege in their brief, page 8, exhausted their remedies in the courts of the State but have persistently disregarded the obvious remedy as prescribed by the statutes of Virginia to have a review of alleged unreasonable and unjust charges.

In both the opinion and order of the Commission (R.p. 224), and opinion of the Court of Appeals (R.pp. 231-2), it is pointed out that the obvious remedy for the petitioners for relief against the rate which they claimed was illegal or unreasonable and unjust was to apply to the State Corporation Commission for a consideration of this rate, the rate effective May 1, 1939. This the petitioners did not do and disclaimed any purpose of doing. As the Commission said, (R.p.224);

“The Petitioners, may at any time, come before the Commission and make complaint that the rates are unjust and unreasonable, and if, upon hearing, the facts show that the complaint is well founded, it will be the duty of the Commission to fix and order substituted for the present rates such rates as shall be just and reasonable.”

In the opinion of the Court of Appeals (R.p.230), is the following:

“It will be observed that the petitioners do not invoke the exercise of the jurisdiction of the Commission to inquire into existing rates and to prescribe reasonable and proper charges as a substi-

tute for those alleged to be unjust and unreasonable. Hence, we are not here concerned with whether the consumers of electrical energy in the Town of Appalachia are, by reason of the lower rates granted to other consumers in other territories, entitled to a similar reduction. That is a matter which should be addressed to the Commission in a proper proceeding filed with it for a reduction of the rates in that locality."

The petition for certiorari raises no Federal question substantial in character, no question of general interest, and, indeed, no arguable question of any kind and should be denied.

Respectfully submitted,

E. RANDOLPH WILLIAMS

T. JUSTIN MOORE

Richmond, Virginia

Counsel for

*Old Dominion Power Company,
Inc.*

October 15th, 1945.